

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.)	
)	
Plaintiff)	
)	
v.)	Case No. 4:05-cv-00329- TCK-SAJ
)	
TYSON FOODS, INC., et al.)	
)	
Defendants)	
<hr style="width: 40%; margin-left: 0;"/>		

**MOTION FOR LEAVE TO SUPPLEMENT THE BRIEF IN SUPPORT OF THE
MOTION TO INTEREVEENE**

In support of their Motion to Supplement the Brief in Support of the Motion to Intervene, the State of Arkansas and the Arkansas Natural Resources Commission (collectively “Arkansas”) respectfully state as follows:

INTRODUCTION

1. Arkansas noted in its original pleading that the issues raised by the Plaintiff in this case are entrusted in the first instance to the jurisdiction of the Arkansas-Oklahoma Arkansas River Basin Compact Commission (“Compact Commission”).

2. By filing the lawsuit, Oklahoma seeks to circumvent a process established by Compact, and codified in federal law, which provides for the resolution of these issues through negotiation and collaboration. This process - which Oklahoma agreed to follow - was facilitating cooperative efforts between the respective state agencies that address water quality issues; and as a result, progress toward improved water quality in the Illinois River Basin was being made.

3. Unfortunately, the filing of the lawsuit has brought those cooperative efforts to a virtual standstill thereby severely hampering further progress in interstate water quality improvement. To further evidence that breakdown in cooperative efforts, the State of Arkansas

thinks it imperative that the Court take note of recent information coming from the Compact Commission.

THE FACTS

4. On September 28, 2006, the Compact Commission met in Monkey Island, Oklahoma. Richard Seybolt is the federally appointed Commissioner and therefore acts as Chairman and presiding officer of the meetings.¹

5. In presenting the Chairman's report, Mr. Seybolt candidly expressed his frustration at the breakdown in progress between the two states caused by the institution of the lawsuit by the State of Oklahoma as follows:

We have had two years of excellent dialogue, three years actually, of excellent dialogue between the two states and the two entities within the states that are very interested in the water quality situation and I thought we had made great strides in developing a monitoring plan and I thought we had a very good situation; but unfortunately the legal aspects of our society have taken over and we are at a standstill, basically, between the two states until we can get resolution of the lawsuit that was filed by the State of Oklahoma.²

6. The fact that the work of the Compact Commission, the entity created pursuant to the terms of the Compact entered into between the states of Arkansas and Oklahoma to address water quality issues, has been derailed by this ill-conceived lawsuit, is vital information for this Court to review when making a determination of the motions filed by Arkansas.

¹ Pursuant to the terms of the Compact, the "Federal Commissioner ... shall be the Chairman and presiding officer of the Commission." Arkansas-Oklahoma Arkansas River Basin Compact, Art. VIII (A).

² See affidavit of Randy Young, attached as Exhibit "1" to the Supplemental Brief in Support of the Motion to Intervene.

THE LAW

7. Rule 15(d) of the Federal Rules of Civil Procedure provides that the Court may allow the filing of a “supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.” Rule 15(d) “gives trial courts broad discretion to permit a party to serve a supplemental pleading setting forth post-complaint transactions, occurrences or events....Such authorization ‘should be liberally granted unless good reason exists for denying leave, such as prejudice to the defendants’” *Walker v. United Parcel Service, Inc.* 240 F. 3d 1268, 1278 (10th Cir. 2001), quoting *Gillihan v. Shillinger*, 872 F. 2d 935, 941, 941 (10th Cir. 1989).

8. Arkansas filed its Motion to Intervene and Brief in Support thereof on May 2, 2006. Since that time, the Compact Commission has met, and its inability to make progress due to the pending lawsuit has been recognized and noted by the one member of the committee without official ties to either state. This is a matter of importance bearing on the controversy herein and further supports the arguments made in the Motion to Intervene filed by Arkansas.

9. It is hard to conceive of any prejudice that would be suffered by the defendants if the Court allows Arkansas to supplement its Motion with this information as the original motion has not been ruled upon. Representatives from Oklahoma, including the Secretary of the Environment, Miles Tolbert, were present at the Commission meeting and are well aware of the tenor of the statements made by the various commissioners. The defendants can certainly not claim surprise by this development.

10. Mr. Scott McDaniel, attorney for Peterson Farms, Inc., has notified Arkansas that the Defendants have no objection to the granting of this motion. Mr. David Riggs, attorney for the Plaintiffs, has notified Arkansas that the Plaintiffs oppose the granting of this motion.

CONCLUSION

Arkansas respectfully requests that pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, it be granted leave of this Court to file its Supplemental Brief in Support of the Motion to Intervene attached hereto as Exhibit "1"; and for all other appropriate relief.

Respectfully submitted,

s/William B. Federman
William B. Federman, OBA 2853
Jennifer F. Sherrill, OBA 19703
FEDERMAN & SHERWOOD
120 North Robinson, Suite 2720
Oklahoma City, OK 73102
Telephone: (405) 235-1560
Fax: (405) 239-2112
wfederman@aol.com
jfs@federmanlaw.com

MIKE BEEBE
Attorney General

By: Teresa Marks, Ark. Bar No. 84117
Deputy Attorney General
Office of the Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201

Charles Moulton Ark. Bar No. 91105
Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that on the 5th day of January, 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W.A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Robert D. Singletary, Assistant Attorney General	robert_singletary@oag.state.ok.us

Douglas Allen Wilson	doug_wilson@riggsabney.com
Melvin David Riggs	driggs@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Riggs Abney Neal Turpen Orbison & Lewis	

Robert Allen Nance	rnance@riggsabney.com
Dorothy Sharon Gentry	sgentry@riggsabney.com
Riggs Abney	

J. Randall Miller	rmiller@mkblaw.net
David P. Page	dpage@mkblaw.net
Louis W. Bullock	lbullock@mkblaw.net
Miller Keffer & Bullock	

Elizabeth C. Ward	lward@motleyrice.com
Frederick C. Baker	fbaker@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth Claire Xidis	exidis@motleyrice.com
Motley Rice	

COUNSEL FOR PLAINTIFFS

Stephen L. Jantzen	sjantzen@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com

Mark D. Hopson	mhopson@sidley.com
Jay Thomas Jorgensen	jjorgensen@sidley.com
Timothy K. Webster	twebster@sidley.com
Sidney Austin LLP	

Robert W. George	Robert.george@kutakrock.com
Michael R. Bond	Michael.bond@kutakrock.com
Kutak Rock LLP	

COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.

R. Thomas Lay rtl@kiralaw.com

Kerr, Irvine, Rhodes & Ables

Jennifer S. Griffin jgriffin@lathropgage.com

Lathrop & Gage, L.C.

COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann rredemann@pmrlaw.net

Lawrence W. Zeringue lzingue@pmrlaw.net

David C. Senger dsenger@pmrlaw.net

Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

Robert E. Sanders rsanders@youngwilliams.com

E. Stephen Williams steve.williams@youngwilliams.com

Young Williams P.A.

COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

George W. Owens gwo@owenslawfirm.com

Randall E. Rose rer@owenslawfirm.com

The Owens Law Firm, P.C.

James M. Graves jgraves@bassettlawfirm.com

Gary V. Weeks

Bassett Law Firm

COUNSEL FOR GEORGE'S INC. AND GEORE'S FARMS, INC.

John R. Elrod jelrod@cwlaw.com

Vicki Bronson vbronson@cwlaw.com

Conner & Winters, P.C.

Bruce W. Freeman bfreeman@cwlaw.com

D. Richard Funk

Conner & Winters, LLP

COUNSEL FOR SIMMONS FOODS, INC.

John H. Tucker jtuckercourts@rhodesokla.com

Colin H. Tucker chtucker@rhodesokla.com

Theresa Noble Hill thillcourts@rhodesokla.com

Rhodes, Hieronymus, Jones, Tucker & Gable

Terry W. West terry@thewestlawfirm.com

The West Law Firm

Delmar R. Ehrich dehrich@faegre.com

Bruce Jones bjones@faegre.com

Krisann Kleibacker Lee kklee@faegre.com

Dora D. Mann
Faegre & Benson, LLP
COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

dmann@faegre.com

Michael D. Graves
D. Kenyon Williams, Jr.
COUNSEL FOR POULTRY GROWERS

mgraves@hallestill.com
kwilliams@hallestill.com

William B. Federman
Jennifer F. Sherrill
Federman & Sherwood

wfederman@aol.com
jfs@federmanlaw.com

Teresa Marks
Charles Moulton
Office of the Attorney General
COUNSEL FOR THE STATE OF ARKANSAS AND THE ARKANSAS NATURAL RESOURCES COMMISSION

teresa.marks@arkansasag.gov
charles.moulton@arkansasag.gov

Carrie Griffith
COUNSEL FOR RAYMOND C. AND SHANNON ANDERSON

griffithlawoffice@yahoo.com

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System.

C. Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118
COUNSEL FOR PLAINTIFFS

Thomas C. Green
Sidley Austin Brown & Wood LLP
1501 K Street NW
Washington, DC 20005
**COUNSEL FOR TYSON FOODS, INC.,
TYSON POULTRY, INC., TYSON
CHICKEN, INC.; AND COBB-
VANTRESS, INC.**

s/William B. Federman
William B. Federman, OBA 2853